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GENERAL COUNSEL  
OF COPYRIGHT

In the Matter of: )  
Distribution of 1998 and 1999 ) No. 2001-8 CARP CD 98-99  
Cable Royalty Funds )

**JOINT SPORTS CLAIMANTS' MOTION  
TO COMPEL PRODUCTION OF DOCUMENTS  
UNDERLYING THE DIRECT CASE OF THE MUSIC CLAIMANTS**

The Joint Sports Claimants ("JSC") hereby move to compel the production of documents that underlie the direct case of the American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI"), and SESAC, Inc. ("SESAC") (referred to collectively herein as the "Music Claimants"). JSC respectfully requests that the Copyright Office ("Office") order the Music Claimants to produce: (1) complete copies of the videotaped programs from which the local television station program excerpts in Music Claimants' Exhibit 1 were taken; and (2) the STATA computer program underlying the statistical analysis of the music use study presented by witness Dr. Peter Boyle. The bases for JSC's requests are discussed below.

**I. THE MUSIC CLAIMANTS SHOULD BE COMPELLED TO PRODUCE  
THE COMPLETE COPIES OF THE VIDEOTAPED PROGRAMS  
UNDERLYING THE EXCERPTS CONTAINED IN EXHIBIT 1.**

Seth Saltzman, the Vice President of ASCAP's Member Management Group, presents testimony on the music included in television programming. As part of his testimony, Saltzman is sponsoring Music Claimants' Exhibit 1, which he describes as "a

video featuring examples of programs broadcast on Local Stations using copyrighted music in various ways in 1998 and 1999.” Saltzman W.D.T. at ¶ 6. *See also id.* at ¶ 34. In fact, Exhibit 1 does not contain entire programs but rather selective excerpts of programs, all of which were supposedly “broadcast on Local Stations retransmitted as distant signals by cable systems in 1998 or 1999.” *Id.* at ¶34.

According to Saltzman, “ASCAP maintains copies of the complete broadcasts,” from which the excerpts were selected, “as part of the ordinary course of its business.” *Id.* JSC requested all documents underlying Music Claimants’ Exhibit 1, “including . . . all copies of full-length broadcasts from which the clips are taken.” Letter from Michele J. Woods to Music Claimants, December 6, 2002 (attached at Tab 1) at page 2. The full-length broadcasts were not produced in the initial document production by Music Claimants, and on December 19 JSC made the following follow-up request for the broadcasts:

**Seth Saltzman Follow-up No. 2:** Page 14, ¶¶ 34 and 35 (Initial Request No. 4): This request asked that you “provide all documents underlying the statement that each of the programs on Music Claimants’ Exhibit 1 (video) was ‘broadcast on Local Stations retransmitted as distant signals by cable systems in 1998 or 1999’ and that ‘each of the examples in my testimony (as well as in the testimony of Jeffrey Lyons and the *Felicity* examples in the testimony of Snuffy Walden), have been performed on Local Stations retransmitted as distant signals by cable systems in 1998 or 1999,’ including, without limitation, all copies of full-length broadcasts from which the clips are taken.” *The full-length broadcasts that underlie the clips were not produced. JSC renews its request for the production of these broadcasts, which, according to Mr. Saltzman’s testimony, are maintained by ASCAP in the ordinary course of business.* To the extent that this request might have been read as a request for the broadcasts underlying Exhibits 2 and 3, JSC clarifies that this request is limited to the full-length broadcasts that underlie the clips on Exhibit 1.

Letter from Michele J. Woods to Music Claimants of December 19, 2002 (attached at Tab 3) at page 3 (emphasis added). In response, the Music Claimants made a number of general objections to this request and indicated that the request for the full-length

broadcasts was unduly burdensome (Objection F),<sup>1</sup> but stated that the videotapes would “be made available, on three business days’ notice, for inspection in the offices of ASCAP (in New York) and copying at the expense of Joints Sports Claimants.” Music Claimants’ Response to Joint Sports Claimants’ Follow-up Discovery Requests (attached at Tab 4) at page 3.

Music Claimants should be directed to provide copies of the underlying videotapes with complete programs to JSC. The expectation that JSC counsel, who are based in the District of Columbia, should be required to travel to New York to review the videotapes is not a reasonable suggestion. Nor is it reasonable or consistent with Copyright Office precedent to require JSC to pay for copying the underlying documents. In general, each party pays to provide the other parties with copies of its documents. JSC has done exactly that in this proceeding, and there is no logical reason to shift the burden of payment to JSC in this one instance.

JSC is entitled, at a minimum, to verify that the excerpts on Exhibit 1 are what they purport to be – that they are taken from programming on stations that were broadcast on distant signals in 1998 and 1999. JSC also is entitled to verify the Music Claimants implicit representation that the underlying programs from which the excerpts were culled, and the excerpts themselves, are representative. Moreover, the Music Claimants argue throughout their direct case that music may be found in all types of programming and that Exhibit 1 demonstrates such to be the case. JSC is entitled to view the entire programs from which the selective excerpts are taken so as to ascertain the role that music plays in

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<sup>1</sup> The definitions for the Objections used by the Music Claimants are found in the Music Claimants’ Response to Joint Sports Claimants’ Discovery Requests (attached at Tab 2) at pages 2-3.

those entire programs and not simply in the excerpts that the Music Claimants have chosen to present to the CARP.

**II. THE MUSIC CLAIMANTS SHOULD BE COMPELLED TO PRODUCE THE STATA COMPUTER PROGRAM THAT UNDERLIES THEIR MUSIC USE STUDY AND ANALYSIS.**

Dr. Peter Boyle, ASCAP's Senior Vice President and Chief Economist, presents a "statistical analysis" of the music use study that is the linchpin of the Music Claimants' direct case. *See* Music Claimants' Prehearing Memorandum at 6. In order to perform his Linear Regression Study, Dr. Boyle uses a computer software program called STATA to "estimate the regression model." Music Claimants' Appendix B to Boyle Testimony at ii. The STATA program is essential in order to understand how the study was conducted.

JSC served requests and follow-up requests for the documents and data that underlie Dr. Boyle's statistical analysis, including the STATA program. Letter of December 6, 2002 (Tab 1), pages 9 (Request 7) and 11 (Request 29); Letter of December 19, 2002 (Tab 3), pages 6 (Follow-up Request 2) and 9 (Follow-up Request 8). In a subsequent conversation in which the parties attempted to resolve a number of discovery disputes, counsel for the Music Claimants suggested that it might be possible for JSC to use Music Claimants' copy of the STATA software program at the office of counsel for Music Claimants, but declined to purchase a copy for JSC.<sup>2</sup> Counsel for JSC indicated that access to the computer program under these restricted conditions was not adequate. The STATA software program has not been produced.

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<sup>2</sup> Counsel for Music Claimants also agreed to identify the version of the STATA software program used in the analysis of the music use study.

The Music Claimants' failure to produce the STATA software program used for Dr. Boyle's regression analysis is a direct violation of the Copyright Office regulations governing the production of discovery for statistical analyses. Section 251.48(f)(4)(iii) provides that if a party offers a study involving statistical methodology, that party shall furnish computer programs used in the study.

In addition, the Music Claimants' failure to furnish the STATA software program creates the same issues raised by NAB's refusal to provide JSC with a copy of the same program. The discussion of those issues at pages 12-14 of Joint Sports Claimants' Motion to Compel Production of Documents by the National Association of Broadcasters is incorporated herein by reference. The Music Claimants should thus be compelled to produce the STATA software program.

### **CONCLUSION**

For the foregoing reasons, JSC's Motion to Compel the Production of Documents Underlying the Direct Case of the Music Claimants should be granted.

Respectfully submitted,

JOINT SPORTS CLAIMANTS

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December 6, 2002

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Re: Distribution of 1998 and 1999 Cable Royalty Funds  
Docket No. 2001-8 CARP CD 98-99

Dear Counsel:

Pursuant to Section 251.45(c) of the rules of the Copyright Office, 37 C.F.R. § 251.45(c), on behalf of the Joint Sports Claimants, we hereby request that you provide the following underlying documents related to the testimony that you have submitted in the above-referenced proceeding.

Please repeat on your response each of the requests below; we will provide you with an electronic copy of these requests. Please provide a separate written response to each request. If you object to any request, state each basis for your objection in sufficient detail so as to permit adjudication of the validity of the objection, and produce any documents responsive to any portion of the request that is not objectionable. If you claim



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a document is "privileged," please state every fact supporting your claim of privilege. The term "underlying" has the same meaning as in Section 251.45(c) of the Copyright Office rules, 37 C.F.R. § 251.45(c), and includes, without limitation, all documents upon which the witness relied in making his or her statement and all documents which verify bottom-line numbers.

The term "document" includes any kind of printed, recorded, written, graphic, or photographic matter (including tape recordings or computer tapes or disks) of any kind or description, including information in an electronic form such as a computer database or web page. For the purposes of these requests, the terms "including", "includes" and "such as" are illustrative and not intended to be limiting.

Please provide all documents produced in response to requests made by other parties to this proceeding.

In accordance with the procedural schedule issued by the Copyright Office on October 28, 2002, we expect to receive your responses to these requests by December 10. When documents are produced, please indicate on all documents the particular request(s) to which they are responsive.

## Testimony of Seth Saltzman

1. Page 4, ¶¶ 9 (carryover) & 11; Page 5, ¶ 12; and Pages 6-7, ¶ 17: Please provide copies of the "bulk licenses" referenced herein that "afford users instant access to all of the compositions in each of the PROs' repertories each year for an annual fee" "at fair rates", that ASCAP, BMI and SESAC have with broadcast television stations, broadcast television networks, cable television networks, and cable television system operators for the years 1990-1992 and 1998-1999.

2. Page 11, ¶ 25: Please provide all documents underlying the statement that there "are themes to both national sports broadcasts on FOX, such as the Major League Baseball, the National Football League and the National Hockey League, and themes to local sports programming, such as the famous theme to *New York Yankee Baseball*," including, without limitation, documents sufficient to identify with particularity the musical works that are claimed to be the themes to such programs.

3. Page 14, ¶ 33: Please provide all documents underlying the statement that "sports . . . programs rely on cues to move the program and signal the viewer," including, without limitation, documents sufficient to identify with particularity the sports programs and cues to which Mr. Saltzman is referring and all documents identifying such cues.

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4. Page 14, ¶¶ 34 and 35: Please provide all documents underlying the statement that each of the programs on Music Claimants' Exhibit 1 (video) was "broadcast on Local Stations retransmitted as distant signals by cable systems in 1998 or 1999" and that "each of the examples in my testimony (as well as in the testimony of Jeffrey Lyons and the *Felicity* examples in the testimony of Snuffy Walden), have been performed on Local Stations retransmitted as distant signals by cable systems in 1998 or 1999," including, without limitation, all copies of full-length broadcasts from which the clips are taken.

5. Page 15, ¶¶ 37 and 38: Please provide all documents underlying the study conducted by Mr. Saltzman to "determine and quantify the extent of this increase [in soundtrack album sales]," including, without limitation, all weekly top-200 chart information from *Billboard* reviewed in the course of conducting the study.

6. Pages 15-16, ¶ 38: Please provide all documents underlying Music Claimants' Exhibit 2, including, without limitation, all documents underlying the statement that "the average weekly number of soundtracks in the top-200 increased from 7.25 in 1990 to 11.29 in 1992; the weekly average continued to steadily increase, reaching an average of 18.15 in 1999."

## Testimony of W.G. "Snuffy" Walden

No requests.

## Testimony of Jeffrey Lyons

1. Pages 18-19, ¶ 59: Please provide all documents underlying the statement that "rock anthems [are] used to exhort fans at baseball games and [ ] energetic songs [are] performed throughout hockey and basketball games to rile up the fans and players," including, without limitation, documents sufficient to identify the particular rock anthems and songs to which Mr. Lyons is referring.

2. Page 19, ¶ 59: Please provide all documents underlying the statement that "Football uses heroic music throughout highlights and pre-game promos," including, without limitation, documents sufficient to identify both the particular heroic music and the particular highlights and promos to which Mr. Lyons is referring.

3. Page 19, ¶ 61: Please provide all documents underlying the statement that "In addition to the background and ambient music performed during the sporting events, major sports, such as NFL and Major League Baseball have created their own unique musical themes," including, without limitation, documents sufficient to identify both the particular background and ambient music and the particular musical themes to which Mr. Lyons is referring.

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4. Page 19, ¶ 61: Please provide all documents underlying the statement that "These themes . . . bring the viewer into the game, into the action. They prepare the viewer. Indeed, they are used as promos to attract attention. They are used as cues between plays and between innings," including, without limitation, documents sufficient to identify the promos and cues to which Mr. Lyons is referring.

5. Page 19, ¶ 61: Please provide all documents underlying the statement that "in addition to the major FOX television sporting events, other local stations have their own themes as well that are used in connection with their particular coverage or sports events. These themes are used to brand the sporting broadcast. You think of Fox baseball, you think of its theme," including, without limitation, documents sufficient to identify the Fox sporting events, local station themes, and Fox baseball theme to which Mr. Lyons is referring.

6. Page 20, ¶ 62: Please provide all documents underlying the statement that "in recent years, songs commonly played at sporting events airing on local stations have been compiled into albums," including, without limitation, documents sufficient to identify the particular songs to which Mr. Lyons is referring.

## Testimony of Frank Krupit

1. Page 1, ¶ 3: Please provide all documents underlying the "objective music use study" discussed in this paragraph, including, without limitation, the complete database underlying the study in electronic format.

2. Page 2, ¶ 4: Please provide all documents underlying the "sample of stations in the 1991-1992 and 1998-1999 Periods" examined in the music use study.

3. Page 2, ¶ 4: Please provide all documents underlying the step of "selecting the station sample."

4. Page 2, ¶ 4: Please provide all documents underlying the step of "choosing a sample week of programming for each year based on the most recent Federal Communications Commission Composite Week ("Composite Week")."

5. Page 2, ¶ 4: Please provide all documents underlying the step of "identifying the programs in the study by episode or program title."

6. Page 2, ¶ 4: Please provide all documents underlying the step of "identifying the duration of music use in the programming."

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7. Page 2, ¶ 5: Please provide all documents underlying the “identif[ication] of a ten station sample for the 1991-1992 Period and a fifteen station sample for the 1998-1999 Period.”

8. Page 2, ¶ 5: Please provide a copy of the Composite Week used to select the programming days to be included in the study.

9. Page 2, ¶ 5: Please provide, in electronic format, a complete copy of the database from TVData Technologies including, without limitation, the program listings referred to in this paragraph.

10. Page 2, ¶ 5: Please provide, in electronic format, a complete copy of the database containing the music cue sheets referred to in this paragraph, including, without limitation, copies of each of the music cue sheets referred to herein.

11. Page 2, ¶ 6: Please provide all documents underlying the statement that “the music use study examined music use information on more than 5,000 hours of programming and identified nearly 110,000 minutes of music.”

12. Pages 2-3, ¶ 7: Please provide all documents underlying the statement that “retransmission of commercial radio broadcasts has historically been allocated a small portion of the cable royalty fund, which has been awarded exclusively to Music Claimants.”

13. Page 3, ¶ 7: Please provide a copy of the Statement of Account Forms that contain “evidence of continued retransmission of commercial radio in 1998 and 1999” for 1998 and 1999 as referred to in this paragraph.

14. Page 3, ¶ 7: Please provide, in electronic format, a copy of the “licensing logs kept by BMI in the ordinary course of its business which demonstrate the continued carriage of commercial radio stations by cable systems in 1998 and 1999” as referred to in this paragraph.

15. Page 3, ¶ 8: Please provide, in electronic format, a copy of the “data from representative programming carried on a sample of stations” for the “ten stations distantly carried in the 1991-1992 Period” and the “fifteen stations distantly carried in the 1998-1999 Period” discussed in this paragraph, including, without limitation, “the non-network programming appearing on the sample stations during a sample week of seven randomly selected days.”

16. Page 3, ¶ 9 and note 3: Please provide a copy of the 1991-1992 “Larson Data” for “the five stations that generated the most cable royalty fees in 1991 and 1992”

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that are listed in this paragraph, and the Larson Data analyzed in the music use study as referred to in note 3.

17. Pages 3-4, ¶ 9: Please provide all documents underlying the statement that "These stations . . . WTBS-Atlanta, GA, WWOR-New York, NY; WGN-Chicago, IL; WPIX-New York, NY; and WSBK, Boston, MA, . . . when combined, generated approximately 80.2% of the total U.S.-based royalty fees for the cable compulsory license in the 1991-1992 Period."

18. Page 4, ¶ 10: Please provide all documents underlying the statement that "For the 1991-1992 sample, a second group of five stations (WBAL-Baltimore, MD, KSHB-Kansas City, MO; KBHK-San Francisco, CA; WITN-Washington, NC; and KXIV, Salt Lake City, UT) was selected by Dr. Peter Boyle from among the remaining distant signal stations," including, without limitation, the documents underlying Appendix A to the Boyle Testimony.

19. Page 4, ¶ 10: Please provide all documents underlying the statement that "The average of music on these five stations was averaged and that average was used to represent the music use on the remainder of the distant signal stations, which accounted for 19.8% of U.S.-based cable royalty fees for the cable compulsory license in the 1991-1992 Period."

20. Page 4, ¶ 11: Please provide all documents underlying the statement that "In 1998, the carriage of WTBS-Atlanta, the station that had historically generated by far the greatest amount of royalty fees each year according to the Larson data, was greatly reduced."

21. Pages 4-5, ¶ 11: Please provide all documents underlying the statement that "in order to include a high percentage of the fees generated in the 1998-1999 sample, we expanded our study to include the top nine United States-based stations . . . [list omitted]. For purposes of continuity with the 1991-1992 sample, we included WTBS-Atlanta, resulting in a total of ten stations that generated 61.3% of the U.S.-based fees generated in the 1998-1999 Period."

22. Page 5, ¶ 12: Please provide all documents underlying the statement that "as with the 1991-1992 Period, the duration of music on the same five additional stations . . . [list omitted] was averaged and that number was used to represent the music use duration on the remainder of the U.S.-based distant signals in the 1998-1999 Period."

23. Page 5, ¶ 13: Please provide a copy of the Composite Week referred to in this paragraph.

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24. Page 6, ¶ 15: Please provide all documents underlying the selection of dates described in this paragraph and the table of dates contained within the paragraph.

25. Page 6, ¶ 16: Please provide, in electronic format, the complete database of TVData information supplied to BMI.

26. Page 7, ¶ 16: Please provide all documents underlying the statement that "BMI processed the TVData listings for each sample station on each day of the sample week for each year in the study and subtracted all network programs."

27. Page 7, note 6: Please provide all documents underlying the statement that "For one station, WBAL, TVData provided incomplete program listings in 1998 and 1999. Accordingly, for that station, BMI supplemented the TVData information with data from newspaper television listings," including, without limitation, the program listings for WBAL supplied by TVData and the newspaper television listings referred to in this note.

28. Page 7, ¶ 16: Please provide all documents underlying the "TVData Lists" of "non-network programs that were carried during the sample week on the stations surveyed during the sample years," as referred to in this paragraph and contained in Music Claimants' Exhibits 30 and 31.

29. Page 8, note 8: Please provide all documents underlying the statement that "In limited cases, an average cue sheet had to be manually created specifically for use in the study. We accomplished this by randomly selecting the cue sheets for 13 episodes of the program from the file for that program," including, without limitation, documents sufficient to show the number of cases and the programs for which "random cue sheets" were generated.

30. Page 9, ¶ 20: Please provide all documents underlying the statement that "In order to obtain the music duration information for a program in the study, we matched the TVData List with BMI's library of cue sheets. For those programs where a cue sheet was not contained in BMI's records, I consulted with ASCAP which provided the music duration for some additional programs from its library of cue sheets," including, without limitation, the cue sheets from the BMI and ASCAP database libraries referred to in this paragraph, in electronic format.

31. Page 9, ¶ 20: Please provide all documents underlying the statement that "we were able to identify the music duration (either through matching actual or average cue sheets) in 2,203 hours of programming broadcast by the ten sample stations involved during the 1991-1992 Period and 3,128 hours of programming broadcast by the ten sample stations in the 1998-1999 Period (the "Matched Programs"). These figures

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represent 77% of the programming on the TVData List for the 1991-1992 Period and 73% of the programming on the TVData List for the 1998-1999 Period" and Music Claimants' Exhibits 33 and 34, including, without limitation, information sufficient to indicate the programs that were not included in the lists of Matched Programs.

32. Page 9, ¶ 21: Please provide all documents underlying the statement that "In the aggregate, the music use study identified 43,920 minutes of music contained in 2,203 hours of programming in the 1991-1992 Period and 65,324 minutes of music in 3,128 hours of programming in the 1998-1999 Period."

33. Page 9, ¶ 21: Please provide all documents underlying the statement that "Dr. Boyle . . . applied weighted averaging calculations to determine the average music duration in distant signal programming for each of the comparison periods covered by the study."

34. Page 10, ¶ 23 and note 10: Please provide all documents underlying the statement that WFMT-FM "continued to receive wide carriage during the 1998-1999 Period," and that "as of February 1999, WFMT was carried on 65 cable systems with 458,199 subscribers," including, without limitation, "Cable Developments 2002," published by the National Cable Television Association.

35. Page 10, ¶ 24: Please provide all documents underlying the statement that "In addition to WFMT, many cable systems carry an assortment of distant and local radio stations," including, without limitation, the "selection of Statements of Account" referred to in this paragraph, and information sufficient to demonstrate how the selection was made.

36. Page 11, ¶ 25: Please provide all documents underlying the statement that "BMI's Licensing Department, from time to time in the ordinary course of business, independently researches the performance of music on public access channels on cable systems. This research demonstrates that cable systems commonly retransmit commercial radio signals, virtually all of which are FM radio signals."

37. Page 11, ¶ 25: Please provide all documents underlying the summary of information from BMI's licensing logs contained in Music Claimants' Exhibit 36.

38. Page 11, ¶ 25: Please provide all documents underlying the statement that "The licensing logs also document the number of BMI titles that were identified as being performed during the logged time periods."

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## Testimony of Dr. Peter M. Boyle

1. Page 3, ¶ 9: Please provide all documents underlying the statement that "Music Claimants' share has always been determined without regard to measured differences between any specific programming types."
2. Page 6, ¶ 17: Please provide all documents underlying the statement that "the appropriate method for determining Music Claimants' share in this proceeding is to begin with the share last attributed to music as a benchmark, that of 4.5% in 1992, and determine if circumstances concerning the use of music across all programming have changed, warranting an adjustment of Music Claimants' share."
3. Page 6, ¶ 17: Please provide all documents underlying the statement that "The relevant inquiry is whether the use of music throughout all programming, cumulatively, has changed since the last determination of Music Claimants' share, either qualitatively or quantitatively, or both."
4. Pages 7 - 16: Please provide all documents underlying the "Music Use Study and Analysis" described in this section of Dr. Boyle's testimony, including, without limitation, the complete database underlying the study in electronic format.
5. In accordance with 37 C.F.R. § 251.48(e), provide all alternative courses of action considered with regard to the music use study and analysis presented, and all such results of any studies or analyses conducted under such alternative courses of action.
6. In accordance with 37 C.F.R. § 251.48(f)(2)(iii), provide any available alternative studies that employ alternative models and variables.
7. In accordance with 37 C.F.R. § 251.48(f)(4)(iii), provide all statistics concerning the music use study and analysis performed, all descriptions of how the tests were conducted, all related calculations, all computer programs used in conducting the music use study and analysis performed, and all final results.
8. In accordance with 37 C.F.R. § 251.48(f)(4)(iv), provide all summarized descriptions of input data and all input data, in electronic format.
9. Page 10, ¶ 28: Please provide all documents used to determine the "total fees generated by each Station" used in choosing the sample for each comparison period, including but not limited to the Form-3 Statements of Account and Cable Data Corporation summaries described in footnote 14.



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10. Page 11, Figures 1 and 2: Please provide all documents underlying Figures 1 and 2, and the percentage of U.S. Fees Generated figures contained therein.

11. Page 12, ¶¶ 32 and 33: Please provide, in electronic format, the data presented by BMI that "included for both the 1991-1992 and 1998-1999 periods, a calculation of music duration on non-network programs performed on the sample Stations over the sample week for each year in each period," referred to as the "Duration Data," including, but not limited to "the non-network programs that aired on each sample Station on each day in each sample week," the "Total Program Hours," the "Matched Program Hours," and the "Music Minutes."

12. Page 12, ¶¶ 32 and 33: Please provide all documents underlying the Duration Data described in these paragraphs.

13. Page 13, ¶ 34: Please provide all documents underlying the statement that "For the Representing Remaining Stations in each sample period, the Duration Data fields (i.e. Music Minutes, Total and Matched Program Hours) were averaged in each period to create a single representative Station."

14. Page 13, ¶ 35: Please provide all documents underlying the statements that Dr. Boyle "calculated the average minutes of music per hour per day for each Station (including "WRST") in each period" and "averaged the daily results for each Station in each period to determine the average minutes of music for each Station in each period," including, but not limited to, all documents reflecting and underlying the calculations.

15. Page 13, Figures 3 and 4: Please provide all documents underlying Figures 3 and 4 and the Average Minutes of Music Per Hour Per Station for 1991-1992 and 1998-1999 contained in these Figures.

16. Page 13, ¶ 36: Please provide all documents underlying the statement that Dr. Boyle "weighted the resulting average music minutes per hour for each of the Stations to take into account the varying economic significance of the Stations," including, but not limited to, all documents reflecting and underlying the calculations.

17. Page 14, ¶ 36: Please provide all documents underlying the statement that "in 1991-1992 the significance of WTBS, which accounted for 41.8% of the total U.S. fees generated, is far greater than any other Station. Similarly, in 1998-1999, WGN, which accounted for nearly half the total U.S. fees generated, is by far the most significant Station."

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18. Page 14, ¶ 37: Please provide all documents underlying the calculations of Station Weights described in this paragraph and calculated in Music Claimants' Exhibit 40.

19. Pages 14-15, ¶ 38: Please provide all documents underlying the "multipli[cation] of the average music minutes per hour for each Station by the appropriate Station Weight in each of the 1991-1992 and 1998-1999 sample periods, resulting in weighted average music minutes per hour for each Station in each sample period" and the "aggregat[ion] [of] of the weighted average music minutes per hour for each Station in each sample period to get a Weighted Average Music Use Per Hour for each sample period."

20. Page 15, Figure 5: Please provide all documents underlying Figure 5 and the Weighted Average Music Use Per Hour figures and Percentage Increase contained therein.

21. Page 15, ¶ 40: Please provide all documents underlying the statement that "we were able to identify 77% of the Program Hours in the 1991-1992 sample and 73% in the 1998-1999 sample."

22. Page 15, ¶ 40: Please provide all documents underlying the analysis of Matched Program Hours referred to in this paragraph.

23. Page 16, ¶ 42: Please provide the calculation of "the statistical confidence intervals for the average music use per hour per period" and all documents underlying the calculation.

24. Page 16, ¶ 43: Please provide all documents underlying the "linear regression analysis of the difference in music use between the two periods" described in this paragraph.

25. Page 16, Figure 6: Please provide all documents underlying Figure 6 and the "Confidence Intervals of the Weighted Average Music Use Per Hour" contained therein.

26. Page 17, ¶ 44: Please provide all documents underlying the statement that "music continues to be carried on radio signals retransmitted by cable systems."

27. Pages i-v, Appendix A: Please provide all documents underlying Appendix A: Selecting the Comparison Period Station Samples, including, but not limited to, the Larson Data described therein.

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# ARNOLD & PORTER

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Joan M. McGivern, et al.

December 6, 2002

Page 12

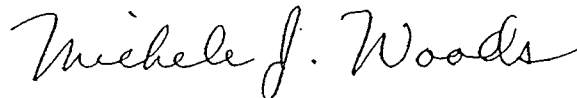
28. Page vi, Table 1: Please provide all documents underlying Table 1: Fees Generated by U.S. and Non-U.S. Stations and the figures contained therein.

29. Page i, Appendix B: Please provide all documents underlying Appendix B: Linear Regression Study, including, but not limited to, the calculations and equations contained therein.

30. Please provide all documents underlying Exhibit 39.

31. Please provide all documents underlying Exhibit 41.

Sincerely,

A handwritten signature in cursive script that reads "Michele J. Woods". The signature is written in dark ink and is positioned above the printed name.

Michele J. Woods



Before the  
COPYRIGHT ARBITRATION ROYALTY PANEL  
COPYRIGHT OFFICE  
LIBRARY OF CONGRESS  
Washington, D.C.

-----X  
:  
In the Matter of :  
:  
Docket No. 2001-8 CARP CD 98-99  
DISTRIBUTION OF 1998 AND 1999 :  
CABLE ROYALTY FUNDS :  
:  
-----X

**MUSIC CLAIMANTS' RESPONSE TO  
JOINT SPORTS CLAIMANTS' DISCOVERY REQUESTS**

Pursuant to 37 C.F.R. § 251.45(c) and the Order of the Copyright Office dated October 28, 2002, Broadcast Music, Inc. ("BMI"), the American Society of Composers Authors and Publishers ("ASCAP"), and SESAC, Inc. ("SESAC") (collectively, the "Music Claimants") hereby reply to the initial discovery requests dated December 6, 2002 (the "Requests") made by Joint Sports Claimants in the above-referenced proceeding.

To the extent any request seeks the production of materials subject to legal privilege, the Music Claimants object and decline to produce such material. To the extent that any request seeks the production of materials to a degree, in a manner, or under circumstances not required by the applicable procedural rules, the Music Claimants object and decline to provide such production. To the extent that any request seeks documents readily available in the public record or in publicly available sources, Music Claimants object and decline to provide such production.

## **PRODUCTION**

Subject to and without waiving all objections to the Requests:

1. To the extent the Requests seeks responsive documents or data that is or can be saved on disks or CDs, responsive materials will be provided in that form, and sent by overnight delivery on December 13, 2002 for delivery on December 14, 2002.
2. To the extent the Requests seek production of a limited volume of paper documents, copies of the documents, if any, will be produced as set forth above.
3. To the extent the Requests seek production of voluminous paper documents or other things (e.g., videotapes), the documents will be made available for inspection and copying, at the requestor's expense, during regular business hours upon reasonable advance notice, at the offices of Drinker, Biddle & Reath LLP, 1500 K Street, N.W., Suite 100, Washington, D.C., from December 13, 2002 until December 31, 2002.

## **OBJECTIONS REFERRED TO BELOW**

In response to various Requests, the Music Claimants have made all or some of the following objections, which are indicated below in the Responses by the following designations:

### **Objection A**

The Request is beyond the scope of requests permitted by the Copyright Office regulations by failing to request documents relied upon or underlying specific factual assertions in the written testimony of the relevant witness and/or by seeking to obtain general discovery of documents from the witness.

### **Objection B**

The Request constitutes interrogatories to the witness, a discovery option not available under the Copyright Office regulations.

### **Objection C**

The Request seeks documents and/or background information concerning the witness solely for purposes of cross-examination and is not a request for underlying documents. Therefore, the Request is beyond the scope of permitted discovery.

**Objection D**

The Request seeks privileged documents and communications to or from the witness and, therefore, is beyond the scope of permitted discovery.

**Objection E**

The Request seeks creation of lists or other documents, not otherwise in existence or not drawn up or relied upon for purposes of Music Claimants' Direct Case and, therefore, is beyond the scope of permitted discovery.

**Objection F**

The Request seeks production that is unduly burdensome and oppressive, and the expense of providing responsive documents would outweigh the probative value of the material.

**Objection G**

The Request is redundant, or unduly burdensome and oppressive, in that it seeks documents, data, or information that is already contained in Music Claimants' testimony, Exhibits, and Appendices, or seeks material underlying a statement that is a matter of the witness' general knowledge and experience, and/or that is generally known and understood to be true.

**Objection H**

The Request is ambiguous as to the statement referenced or the materials sought.

**Objection I**

The Request either misstates the witness's testimony or quotes the witness out of context. Construed in the context of a reasonable reading of the witness's testimony as a whole, the Request is objectionable under other applicable objections.

**REQUESTS MADE TO SETH SALTZMAN**

**Request No. 1** Page 4, ¶¶ 9 (carryover) & 11; Page 5, ¶ 12; and Pages 6-7, ¶ 17: Please provide copies of the "bulk licenses" referenced herein that "afford users instant access to all of the compositions in each of the PROs' repertories each year for an annual fee" "at fair rates", that ASCAP, BMI and SESAC have with broadcast television stations, broadcast television networks, cable television networks, and cable television system operators for the years 1990-1992 and 1998-1999.

**Response to No. 1** The Request is improper for the reasons stated in Objections A, E, F and G. Without prejudice to or waiving the foregoing objections, further information supporting the referenced statement may be found on the Music Claimants' websites at <ascap.com>, <bmi.com> and <sesac.com>. In addition, the statement is based on Mr. Saltzman's general knowledge and experience, and upon advice by counsel.

**Request No. 2** Page 11, ¶ 25: Please provide all documents underlying the statement that there "are themes to both national sports broadcasts on FOX, such as the Major League Baseball, the National Football League and the National Hockey League, and themes to local sports programming, such as the famous theme to New York Yankee Baseball," including, without limitation, documents sufficient to identify with particularity the musical works that are claimed to be the themes to such programs.

**Response to No. 2** The Request is improper for the reasons stated in Objections E and G. Without prejudice to or waiving the foregoing objections, the statement is based on Mr. Saltzman's general knowledge and experience.

**Request No. 3** Page 14, ¶ 33: Please provide all documents underlying the statement that "sports . . . programs rely on cues to move the program and signal the viewer," including, without limitation, documents sufficient to identify with particularity the sports programs and cues to which Mr. Saltzman is referring and all documents identifying such cues.

**Response to No. 3** The Request is improper for the reasons stated in Objections E, F and G. Without prejudice to or waiving the foregoing objections, the statement is based on Mr. Saltzman's general knowledge and experience.

**Request No. 4** Page 14, ¶¶ 34 and 35: Please provide all documents underlying the statement that each of the programs on Music Claimants' Exhibit 1 (video) was "broadcast on Local Stations retransmitted as distant signals by cable systems in 1998 or 1999" and that "each of the examples in my testimony (as well as in the testimony of Jeffrey Lyons and the Felicity examples in the testimony of Snuffy Walden), have been performed on Local Stations retransmitted as distant signals by cable systems in 1998 or 1999," including, without limitation, all copies of full-length broadcasts from which the clips are taken.

**Response to No. 4** The Request is improper for the reasons stated in Objections E, F, and G. Without prejudice to or waiving the foregoing objections, additional documents and things will be produced or made available, as set forth above.

**Request No. 5** Page 15, ¶¶ 37 and 38: Please provide all documents underlying the study conducted by Mr. Saltzman to "determine and quantify the extent of this increase [in soundtrack album sales]," including, without limitation, all weekly top-200 chart information from Billboard reviewed in the course of conducting the study.

**Response to No. 5** The Request is improper for the reasons stated in Objections E, F and G. Without prejudice to or waiving the foregoing objections, additional documents and things will be produced or made available, as set forth above.

**Request No. 6** Pages 15-16, ¶ 38: Please provide all documents underlying Music Claimants' Exhibit 2, including, without limitation, all documents underlying the statement that "the average weekly number of soundtracks in the top-200 increased from 7.25 in 1990



to 11.29 in 1992; the weekly average continued to steadily increase, reaching an average of 18.15 in 1999."

**Response to No. 6** The Request is improper for the reasons stated in Objections D, E, and F. Without prejudice to or waiving the foregoing objections, additional documents and things will be produced or made available, as set forth above.

#### REQUESTS MADE TO W.G. "SNUFFY" WALDEN

No requests were made.

#### REQUESTS MADE TO JEFFREY LYONS

**Request No. 1** Pages 18-19, ¶ 59: Please provide all documents underlying the statement that "rock anthems [are] used to exhort fans at baseball games and [] energetic songs [are] performed throughout hockey and basketball games to rile up the fans and players," including, without limitation, documents sufficient to identify the particular rock anthems and songs to which Mr. Lyons is referring.

**Response to No. 1** The Request is improper for the reasons stated in Objections E, F, and G. Without prejudice to or waiving the foregoing objections, the statement is based on Mr. Lyons' general knowledge and experience.

**Request No. 2** Page 19, ¶ 59: Please provide all documents underlying the statement that "Football uses heroic music throughout highlights and pre-game promos," including, without limitation, documents sufficient to identify both the particular heroic music and the particular highlights and promos to which Mr. Lyons is referring.

**Response to No. 2** The Request is improper for the reasons stated in Objections E, F and G. Without prejudice to or waiving the foregoing objections, the statement is based on Mr. Lyons' general knowledge and experience.

**Request No. 3** Page 19, ¶ 61: Please provide all documents underlying the statement that "In addition to the background and ambient music performed during the sporting events, major sports, such as NFL and Major League Baseball have created their own unique musical themes," including, without limitation, documents sufficient to identify both the particular background and ambient music and the particular musical themes to which Mr. Lyons is referring.

**Response to No. 3** The Request is improper for the reasons stated in Objections E, F and G. Without prejudice to or waiving the foregoing objections, the statement is based on Mr. Lyons' general knowledge and experience. .

**Request No. 4** Page 19, ¶ 61: Please provide all documents underlying the statement that "These themes . . . bring the viewer into the game, into the action. They prepare the viewer. Indeed, they are used as promos to attract attention. They are used as cues between

plays and between innings," including, without limitation, documents sufficient to identify the promos and cues to which Mr. Lyons is referring.

**Response to No. 4** The Request is improper for the reasons stated in Objections E, F and G. Without prejudice to or waiving the foregoing objections, the statement is based on Mr. Lyons' general knowledge and experience.

**Request No. 5** Page 19, ¶ 61: Please provide all documents underlying the statement that "in addition to the major FOX television sporting events, other local stations have their own themes as well that are used in connection with their particular coverage or sports events. These themes are used to brand the sporting broadcast. You think of Fox baseball, you think of its theme," including, without limitation, documents sufficient to identify the Fox sporting events, local station themes, and Fox baseball theme to which Mr. Lyons is referring.

**Response to No. 5** The Request is improper for the reasons stated in Objections E, F and G. Without prejudice to or waiving the foregoing objections, the statement is based on Mr. Lyons' general knowledge and experience.

**Request No. 6** Page 20, ¶ 62: Please provide all documents underlying the statement that "in recent years, songs commonly played at sporting events airing on local stations have been compiled into albums," including, without limitation, documents sufficient to identify the particular songs to which Mr. Lyons is referring.

**Response to No. 6** The Request is improper for the reasons stated in Objection G. Without prejudice to or waiving the foregoing objections, the statement is based on Mr. Lyons' general knowledge and experience.

#### **REQUESTS MADE TO FRANK KRUPIT**

**Request No. 1** Page 1, ¶ 3: Please provide all documents underlying the "objective music use study" discussed in this paragraph, including, without limitation, the complete database underlying the study in electronic format.

**Response to No. 1** The Request is improper for the reasons stated in Objection A. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 2** Page 2, ¶ 4: Please provide all documents underlying the "sample of stations in the 1991-1992 and 1998-1999 Periods" examined in the music use study.

**Response to No. 2** The Request is improper for the reasons stated in Objection G. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study will be produced and made available, as set forth above. Other than the music use study, there are no other underlying documents.

**Request No. 3** Page 2, ¶ 4: Please provide all documents underlying the step of "selecting the station sample."

**Response to No. 3** The Request is improper for the reasons stated in Objections A, F and G. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 4** Page 2, ¶ 4: Please provide all documents underlying the step of "choosing a sample week of programming for each year based on the most recent Federal Communications Commission Composite Week ("Composite Week")."

**Response to No. 4** The Request is improper for the reasons stated in Objections A and G. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study will be produced and made available as set forth above.

**Request No. 5** Page 2, ¶ 4: Please provide all documents underlying the step of "identifying the programs in the study by episode or program title."

**Response to No. 5** The Request is improper for the reasons stated in Objections A, E, and F. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 6** Page 2, ¶ 4: Please provide all documents underlying the step of "identifying the duration of music use in the programming."

**Response to No. 6** The Request is improper for the reasons stated in Objections A and F. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 7** Page 2, ¶ 5: Please provide all documents underlying the "identif[ication] of a ten station sample for the 1991-1992 Period and a fifteen station sample for the 1998-1999 Period."

**Response to No. 7** The Request is improper for the reasons stated in Objections A and F. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 8** Page 2, ¶ 5: Please provide a copy of the Composite Week used to select the programming days to be included in the study.

**Response to No. 8** The Request is improper for the reasons stated in Objection G. Without prejudice to or waiving the foregoing objections, additional documents

underlying the music use study will be produced and made available, as set forth above.

**Request No. 9** Page 2, ¶ 5: Please provide, in electronic format, a complete copy of the database from TVData Technologies including, without limitation, the program listings referred to in this paragraph.

**Response to No. 9** The Request is improper for the reasons stated in Objections G and I. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 10** Page 2, ¶ 5: Please provide, in electronic format, a complete copy of the database containing the music cue sheets referred to in this paragraph, including, without limitation, copies of each of the music cue sheets referred to herein.

**Response to No. 10** The Request is improper for the reasons stated in Objections G and I. Without prejudice to or waiving the foregoing objection, Music Claimants state that the vast majority of cue sheets are not available in electronic format, and additional documents underlying the music use study will be produced and made available as set forth above.

**Request No. 11** Page 2, ¶ 6: Please provide all documents underlying the statement that "the music use study examined music use information on more than 5,000 hours of programming and identified nearly 110,000 minutes of music."

**Response to No. 11** The Request is improper for the reasons stated in Objections G. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available as set forth above.

**Request No. 12** Pages 2-3, ¶ 7: Please provide all documents underlying the statement that "retransmission of commercial radio broadcasts has historically been allocated a small portion of the cable royalty fund, which has been awarded exclusively to Music Claimants."

**Response to No. 12** The Request is improper for the reasons stated in Objection F, because the determination is a matter of public record available in the Federal Register.

**Request No. 13** Page 3, ¶ 7: Please provide a copy of the Statement of Account Forms that contain "evidence of continued retransmission of commercial radio in 1998 and 1999" for 1998 and 1999 as referred to in this paragraph.

**Response to No. 13** The Request is improper for the reasons stated in Objection G. Without prejudice to or waiving the foregoing objections, Music Claimants state that such documents were produced as Exhibit 35 to Mr. Krupit's testimony.

**Request No. 14** Page 3, ¶ 7: Please provide, in electronic format, a copy of the "licensing logs kept by BMI in the ordinary course of its business which demonstrate the continued carriage of commercial radio stations by cable systems in 1998 and 1999" as referred to in this paragraph.

**Response to No. 14** The Request is improper for the reasons stated in Objection G. Without prejudice to or waiving the foregoing objections, Music Claimants state that such documents were produced as Exhibit 36 to Mr. Krupit's testimony and are not available in electronic format.

**Request No. 15** Page 3, ¶ 8: Please provide, in electronic format, a copy of the "data from representative programming carried on a sample of stations" for the "ten stations distantly carried in the 1991-1992 Period" and the "fifteen stations distantly carried in the 1998-1999 Period" discussed in this paragraph, including, without limitation, "the non-network programming appearing on the sample stations during a sample week of seven randomly selected days."

**Response to No. 15** The Request is improper for the reasons stated in Objection F. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 16** Page 3, ¶ 9 and note 3: Please provide a copy of the 1991-1992 "Larson Data" for "the five stations that generated the most cable royalty fees in 1991 and 1992" that are listed in this paragraph, and the Larson Data analyzed in the music use study as referred to in note 3.

**Response to No. 16** The Request is improper for the reasons stated in Objection F. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study, including the Larson Data, will be produced and made available, as set forth above.

**Request No. 17** Pages 3-4, ¶ 9: Please provide all documents underlying the statement that "These stations . . . WTBS-Atlanta, GA, WWOR-New York, NY; WGN-Chicago, IL; WPIX-New York, NY; and WSBK, Boston, MA, . . . when combined, generated approximately 80.2% of the total U.S.-based royalty fees for the cable compulsory license in the 1991-1992 Period."

**Response to No. 17** The Request is improper for the reasons stated in Objections F and G. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study, including the Larson Data, will be produced and made available, as set forth above.

**Request No. 18** Page 4, ¶ 10: Please provide all documents underlying the statement that "For the 1991-1992 sample, a second group of five stations (WBAL-Baltimore, MD, KSHB-Kansas City, MO; KBHK-San Francisco, CA; WITN-Washington, NC; and KXIV,

Salt Lake City, UT) was selected by Dr. Peter Boyle from among the remaining distant signal stations," including, without limitation, the documents underlying Appendix A to the Boyle Testimony.

**Response to No. 18** The Request is improper for the reasons stated in Objections A, D, F and G. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 19** Page 4, ¶ 10: Please provide all documents underlying the statement that "The average of music on these five stations was averaged and that average was used to represent the music use on the remainder of the distant signal stations, which accounted for 19.8% of U.S.-based cable royalty fees for the cable compulsory license in the 1991-1992 Period."

**Response to No. 19** The Request is improper for the reasons stated in Objections F and G. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 20** Page 4, ¶ 11: Please provide all documents underlying the statement that "In 1998, the carriage of WTBS-Atlanta, the station that had historically generated by far the greatest amount of royalty fees each year according to the Larson data (sic), was greatly reduced."

**Response to No. 20** The Request is improper for the reasons stated in Objection F. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 21** Pages 4-5, ¶ 11: Please provide all documents underlying the statement that "in order to include a high percentage of the fees generated in the 1998-1999 sample, we expanded our study to include the top nine United States-based stations . . . [list omitted]. For purposes of continuity with the 1991-1992 sample, we included WTBS-Atlanta, resulting in a total of ten stations that generated 61.3% of the U.S.-based fees generated in the 1998-1999 Period."

**Response to No. 21** The Request is improper for the reasons stated in Objection G. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 22** Page 5, ¶ 12: Please provide all documents underlying the statement that "as with the 1991-1992 Period, the duration of music on the same five additional stations . . . [list omitted] was averaged and that number was used to represent the music use duration on the remainder of the U.S.-based distant signals in the 1998-1999 Period."

**Response to No. 22** The Request is improper for the reasons stated in Objections F and G. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 23** Page 5, ¶ 13: Please provide a copy of the Composite Week referred to in this paragraph.

**Response to No. 23** The Request is improper for the reasons stated in Objection G. Without prejudice to or waiving the foregoing objections, Music Claimants will produce the underlying document.

**Request No. 24** Page 6, ¶ 15: Please provide all documents underlying the selection of dates described in this paragraph and the table of dates contained within the paragraph.

**Response to No. 24** The Request is improper for the reasons stated in Objections E, F and G. Without prejudice to or waiving the foregoing objections, other than Mr. Krupit's explanation of the study, there are no other underlying documents.

**Request No. 25** Page 6, ¶ 16: Please provide, in electronic format, the complete database of TVData information supplied to BMI.

**Response to No. 25** The Request is improper for the reasons stated in Objections G and I. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 26** Page 7, ¶ 16: Please provide all documents underlying the statement that "BMI processed the TVData listings for each sample station on each day of the sample week for each year in the study and subtracted all network programs."

**Response to No. 26** The Request is improper for the reasons stated in Objection G. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 27** Page 7, note 6: Please provide all documents underlying the statement that "For one station, WBAL, TVData provided incomplete program listings in 1998 and 1999. Accordingly, for that station, BMI supplemented the TVData information with data from newspaper television listings," including, without limitation, the program listings for WBAL supplied by TVData and the newspaper television listings referred to in this note.

**Response to No. 27** The Request is improper for the reasons stated in Objection G. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 28** Page 7, ¶ 16: Please provide all documents underlying the "TVData Lists" of "non-network programs that were carried during the sample week on the stations surveyed during the sample years," as referred to in this paragraph and contained in Music Claimants' Exhibits 30 and 31.

**Response to No. 28** The Request is improper for the reasons stated in Objection G. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 29** Page 8, note 8: Please provide all documents underlying the statement that "In limited cases, an average cue sheet had to be manually created specifically for use in the study. We accomplished this by randomly selecting the cue sheets for 13 episodes of the program from the file for that program," including, without limitation, documents sufficient to show the number of cases and the programs for which "random cue sheets" were generated.

**Response to No. 29** The Request is improper for the reasons stated in Objections F and G. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study will be produced and made available, as set forth above. Music Claimants state that the vast majority of cue sheets are not available in electronic format.

**Request No. 30** Page 9, ¶ 20: Please provide all documents underlying the statement that "In order to obtain the music duration information for a program in the study, we matched the TVData List with BMI's library of cue sheets. For those programs where a cue sheet was not contained in BMI's records, I consulted with ASCAP which provided the music duration for some additional programs from its library of cue sheets," including, without limitation, the cue sheets from the BMI and ASCAP database libraries referred to in this paragraph, in electronic format.

**Response to No. 30** The Request is improper for the reasons stated in Objections F and G. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study will be produced and made available, as set forth above. Music Claimants state that the vast majority of cue sheets are not available in electronic format.

**Request No. 31** Page 9, ¶ 20: Please provide all documents underlying the statement that "we were able to identify the music duration (either through matching actual or average cue sheets) in 2,203 hours of programming broadcast by the ten sample stations involved during the 1991-1992 Period and 3,128 hours of programming broadcast by the ten sample stations in the 1998-1999 Period (the "Matched Programs"). These figures represent 77% of the programming on the TVData List for the 1991-1992 Period and 73% of the programming on the TVData List for the 1998-1999 Period" and Music Claimants' Exhibits 33 and 34, including, without limitation, information sufficient to indicate the programs that were not included in the lists of Matched Programs.



**Response to No. 31** The Request is improper for the reasons stated in Objections F and G. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study will be produced and made available, as set forth above. Music Claimants state that the vast majority of cue sheets are not available in electronic format.

**Request No. 32** Page 9, ¶ 21: Please provide all documents underlying the statement that "In the aggregate, the music use study identified 43,920 minutes of music contained in 2,203 hours of programming in the 1991-1992 Period and 65,324 minutes of music in 3,128 hours of programming in the 1998-1999 Period."

**Response to No. 32** The Request is improper for the reasons stated in Objections F and G. Without prejudice to or waiving the foregoing objections, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 33** Page 9, ¶ 21: Please provide all documents underlying the statement that "Dr. Boyle . . . applied weighted averaging calculations to determine the average music duration in distant signal programming for each of the comparison periods covered by the study."

**Response to No. 33** The Request is improper for the reasons stated in Objection F. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 34** Page 10, ¶ 23 and note 10: Please provide all documents underlying the statement that WFMT-FM "continued to receive wide carriage during the 1998-1999 Period," and that "as of February 1999, WFMT was carried on 65 cable systems with 458,199 subscribers," including, without limitation, "Cable Developments 2002," published by the National Cable Television Association.

**Response to No. 34** The Request is improper for the reasons stated in Objection F. Without prejudice to or waiving the foregoing objections, Music Claimants will produce the portion of the NCTA publication cited.

**Request No. 35** Page 10, ¶ 24: Please provide all documents underlying the statement that "In addition to WFMT, many cable systems carry an assortment of distant and local radio stations," including, without limitation, the "selection of Statements of Account" referred to in this paragraph, and information sufficient to demonstrate how the selection was made.

**Response to No. 35** The Request is improper for the reasons stated in Objection G. Without prejudice to or waiving the foregoing objections, Music Claimants state that such documents were produced as Exhibit 35 to Mr. Krupit's testimony.

**Request No. 36** Page 11, ¶ 25: Please provide all documents underlying the statement that "BMI's Licensing Department, from time to time in the ordinary course of business, independently researches the performance of music on public access channels on cable systems. This research demonstrates that cable systems commonly retransmit commercial radio signals, virtually all of which are FM radio signals."

**Response to No. 36** The Request is improper for the reasons stated in Objection G. Without prejudice to or waiving the foregoing objections, the statement is based on Mr. Krupit's general knowledge and experience at BMI.

**Request No. 37** Page 11, ¶ 25: Please provide all documents underlying the summary of information from BMI's licensing logs contained in Music Claimants' Exhibit 36.

**Response to No. 37** The Request is improper for the reasons stated in Objections E, F and G. Without prejudice to or waiving the foregoing objections, the statement is based on Mr. Krupit's general knowledge and experience at BMI.

**Request No. 38** Page 11, ¶ 25: Please provide all documents underlying the statement that "The licensing logs also document the number of BMI titles that were identified as being performed during the logged time periods."

**Response to No. 38** The Request is improper for the reasons stated in Objection G. Music Claimants further state that the identified statement is self-evident from a review of Exhibit 36.

#### **REQUESTS MADE TO DR. PETER M. BOYLE**

**Request No. 1** Page 3, ¶ 9: Please provide all documents underlying the statement that "Music Claimants' share has always been determined without regard to measured differences between any specific programming types."

**Response to No. 1** The Request is improper for the reasons stated in Objection F, because the determination is a matter of public record available in the Federal Register.

**Request No. 2** Page 6, ¶ 17: Please provide all documents underlying the statement that "the appropriate method for determining Music Claimants' share in this proceeding is to begin with the share last attributed to music as a benchmark, that of 4.5% in 1992, and determine if circumstances concerning the use of music across all programming have changed, warranting an adjustment of Music Claimants' share."

**Response to No. 2** The Request is improper for the reasons stated in Objections E and G. Without prejudice to or waiving the foregoing objections, the statement is based on Dr. Boyle's general knowledge and experience.

**Request No. 3** Page 6, ¶ 17: Please provide all documents underlying the statement that "The relevant inquiry is whether the use of music throughout all programming, cumulatively, has changed since the last determination of Music Claimants' share, either qualitatively or quantitatively, or both."

**Response to No. 3** The Request is improper for the reasons stated in Objection E. Without prejudice to or waiving the foregoing objections, the statement is based on Dr. Boyle's general knowledge and experience.

**Request No. 4** Pages 7 - 16: Please provide all documents underlying the "Music Use Study and Analysis" described in this section of Dr. Boyle's testimony, including, without limitation, the complete database underlying the study in electronic format.

**Response to No. 4** The Request is improper for the reasons stated in Objection A, E, F and G. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 5** In accordance with 37 C.F.R. § 251.48(e), provide all alternative courses of action considered with regard to the music use study and analysis presented, and all such results of any studies or analyses conducted under such alternative courses of action.

**Response to No. 5** The Request is improper for the reasons stated in Objection A, D, and E. Without prejudice to or waiving the foregoing objections, there are no underlying documents.

**Request No. 6** In accordance with 37 C.F.R. § 251.48(f)(2)(iii), provide any available alternative studies that employ alternative models and variables.

**Response to No. 6** The Request is improper for the reasons stated in Objection A, D, and E. Without prejudice to or waiving the foregoing objections, there are no other underlying documents.

**Request No. 7** In accordance with 37 C.F.R. § 251.48(f)(4)(iii), provide all statistics concerning the music use study and analysis performed, all descriptions of how the tests were conducted, all related calculations, all computer programs used in conducting the music use study and analysis performed, and all final results.

**Response to No. 7** The Request is improper for the reasons stated in Objection A, D, E, F and G. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 8** In accordance with 37 C.F.R. § 251.48(f)(4)(iv), provide all summarized descriptions of input data and all input data, in electronic format.

**Response to No. 8** The Request is improper for the reasons stated in Objection A, E, and F. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 9** Page 10, ¶ 28: Please provide all documents used to determine the "total fees generated by each Station" used in choosing the sample for each comparison period, including but not limited to the Form-3 Statements of Account and Cable Data Corporation summaries described in footnote 14.

**Response to No. 9** The Request is improper for the reasons stated in Objection A, E and F. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 10** Page 11, Figures 1 and 2: Please provide all documents underlying Figures 1 and 2, and the percentage of U.S. Fees Generated figures contained therein.

**Response to No. 10** The Request is improper for the reasons stated in Objections D and F. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 11** Page 12, ¶¶ 32 and 33: Please provide, in electronic format, the data presented by BMI that "included for both the 1991-1992 and 1998-1999 periods, a calculation of music duration on non-network programs performed on the sample Stations over the sample week for each year in each period," referred to as the "Duration Data," including, but not limited to "the non-network programs that aired on each sample Station on each day in each sample week," the "Total Program Hours," the "Matched Program Hours," and the "Music Minutes."

**Response to No. 11** The Request is improper for the reasons stated in Objections A and F. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 12** Page 12, ¶¶ 32 and 33: Please provide all documents underlying the Duration Data described in these paragraphs.

**Response to No. 12** The Request is improper for the reasons stated in Objections A and F. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 13** Page 13, ¶ 34: Please provide all documents underlying the statement that "For the Representing Remaining Stations in each sample period, the Duration Data

fields (i.e. Music Minutes, Total and Matched Program Hours) were averaged in each period to create a single representative Station.”

**Response to No. 13** The Request is improper for the reasons stated in Objection E and G. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 14** Page 13, ¶ 35: Please provide all documents underlying the statements that Dr. Boyle “calculated the average minutes of music per hour per day for each Station (including ‘WRST’) in each period” and “averaged the daily results for each Station in each period to determine the average minutes of music for each Station in each period,” including, but not limited to, all documents reflecting and underlying the calculations.

**Response to No. 14** The Request is improper for the reasons stated in Objection F and G. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 15** Page 13, Figures 3 and 4: Please provide all documents underlying Figures 3 and 4 and the Average Minutes of Music Per Hour Per Station for 1991-1992 and 1998-1999 contained in these Figures.

**Response to No. 15** The Request is improper for the reasons stated in Objection F and G. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 16** Page 13, ¶ 36: Please provide all documents underlying the statement that Dr. Boyle “weighted the resulting average music minutes per hour for each of the Stations to take into account the varying economic significance of the Stations,” including, but not limited to, all documents reflecting and underlying the calculations.

**Response to No. 16** The Request is improper for the reasons stated in Objections A F and G. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 17** Page 14, ¶ 36: Please provide all documents underlying the statement that “in 1991-1992 the significance of WTBS, which accounted for 41.8% of the total U.S. fees generated, is far greater than any other Station. Similarly, in 1998-1999, WGN, which accounted for nearly half the total U.S. fees generated, is by far the most significant Station.”

**Response to No. 17** The Request is improper for the reasons stated in Objections F and G. Without prejudice to or waiving the foregoing objection, additional

documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 18** Page 14, ¶ 37: Please provide all documents underlying the calculations of Station Weights described in this paragraph and calculated in Music Claimants' Exhibit 40.

**Response to No. 18** The Request is improper for the reasons stated in Objections A, F and G. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 19** Pages 14-15, ¶ 38: Please provide all documents underlying the "multipli[cation] of [sic] the average music minutes per hour for each Station by the appropriate Station Weight in each of the 1991-1992 and 1998-1999 sample periods, resulting in weighted average music minutes per hour for each Station in each sample period" and the "aggregat[i]on [of] of the weighted average music minutes per hour for each Station in each sample period to get a Weighted Average Music Use Per Hour for each sample period."

**Response to No. 19** The Request is improper for the reasons stated in Objections F and G. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 20** Page 15, Figure 5: Please provide all documents underlying Figure 5 and the Weighted Average Music Use Per Hour figures and Percentage Increase contained therein.

**Response to No. 20** The Request is improper for the reasons stated in Objections F and G. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 21** Page 15, ¶ 40: Please provide all documents underlying the statement that "we were able to identify 77% of the Program Hours in the 1991-1992 sample and 73% in the 1998-1999 sample."

**Response to No. 21** The Request is improper for the reasons stated in Objection F. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 22** Page 15, ¶ 40: Please provide all documents underlying the analysis of Matched Program Hours referred to in this paragraph.

**Response to No. 22** The Request is improper for the reasons stated in Objections A, E and F. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 23** Page 16, ¶ 42: Please provide the calculation of “the statistical confidence intervals for the average music use per hour per period” and all documents underlying the calculation.

**Response to No. 23** The Request is improper for the reasons stated in Objections A and F. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 24** Page 16, ¶ 43: Please provide all documents underlying the “linear regression analysis of the difference in music use between the two periods” described in this paragraph.

**Response to No. 24** The Request is improper for the reasons stated in Objections A and F. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 25** Page 16, Figure 6: Please provide all documents underlying Figure 6 and the “Confidence Intervals of the Weighted Average Music Use Per Hour” contained therein.

**Response to No. 25** The Request is improper for the reasons stated in Objection F. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 26** Page 17, ¶ 44: Please provide all documents underlying the statement that “music continues to be carried on radio signals retransmitted by cable systems.”

**Response to No. 26** The Request is improper for the reasons stated in Objections F and G. Without prejudice to or waiving the foregoing objections, the statement is based on Dr. Boyle’s general knowledge and experience.

**Request No. 27** Pages i-v, Appendix A: Please provide all documents underlying Appendix A: Selecting the Comparison Period Station Samples, including, but not limited to, the Larson Data described therein.

**Response to No. 27** The Request is improper for the reasons stated in Objections A, D, and F. Without prejudice to or waiving the foregoing objection, additional

documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 28** Page vi, Table 1: Please provide all documents underlying Table 1: Fees Generated by U.S. and Non-U.S. Stations and the figures contained therein.

**Response to No. 28** The Request is improper for the reasons stated in Objection F. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 29** Page i, Appendix B: Please provide all documents underlying Appendix B: Linear Regression Study, including, but not limited to, the calculations and equations contained therein.

**Response to No. 29** The Request is improper for the reasons stated in Objections A and F. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 30** Please provide all documents underlying Exhibit 39.

**Response to No. 30** The Request is improper for the reasons stated in Objection F. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.

**Request No. 31** Please provide all documents underlying Exhibit 41.

**Response to No. 31** The Request is improper for the reasons stated in Objection F. Without prejudice to or waiving the foregoing objection, additional documents underlying the music use study will be produced and made available, as set forth above.



Dated: December 10, 2002

Respectfully submitted,

**MUSIC CLAIMANTS**

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## CERTIFICATE OF SERVICE

I, Jeffrey J. Lopez, hereby certify that on this 10th day of December 2002, a copy of the foregoing "MUSIC CLAIMANTS' RESPONSE TO JOINT SPORTS CLAIMANTS' DISCOVERY REQUESTS" was served by U.S. First Class Mail on the following:

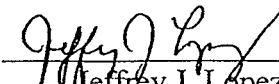
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Dated: December 10, 2002

  
Jeffrey J. Lopez



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December 19, 2002

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Re: Distribution of 1998 and 1999 Cable Royalty Funds  
Docket No. 2001-8 CARP CD 98-99

Dear Counsel:

Pursuant to Section 251.45(c) of the rules of the Copyright Office, 37 C.F.R. § 251.45(c), on behalf of the Joint Sports Claimants ("JSC"), we hereby request that you provide the following underlying documents related to the testimony that you have submitted in the above-referenced proceeding.

Please repeat on your response each of the requests below; we will provide you with an electronic copy of these requests. Please provide a separate written response to each request. If you object to any request, state each basis for your objection in sufficient detail so as to permit adjudication of the validity of the objection, and produce any

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documents responsive to a portion of the request that is not objectionable. If you claim a document is "privileged," please state every fact supporting your claim of privilege.

We note that many of your responses to JSC's initial requests contain multiple objections represented by letters, some of which have definitions that also include multiple grounds for objection (e.g. Objection G). It is thus difficult for us to determine whether underlying documents exist but the Music Claimants object to producing them, or whether there are no underlying documents. In your response to this set of requests, please indicate for each request whether in fact responsive documents exist, and, to the extent that you do not plan to produce those documents in discovery, your reasons for declining to do so.

The term "underlying" has the same meaning as in Section 251.45(c) of the Copyright Office rules, 37 C.F.R. § 251.45(c), and includes, without limitation, all documents upon which the witness relied in making his or her statement and all documents which verify bottom-line numbers.

The term "document" includes any kind of printed, recorded, written, graphic, or photographic matter (including tape recordings or computer tapes or disks) of any kind or description, including information in an electronic form such as a computer database or web page. For the purposes of these requests, the terms "including", "includes" and "such as" are illustrative and not intended to be limiting.

In accordance with the procedural schedule issued by the Copyright Office on October 28, 2002, we expect to receive your responses to these follow-up requests by December 23. Please indicate on all documents produced the particular requests to which they are responsive.

As I discussed with Phil Mause earlier this week, we understand that you will provide us with all documents produced in response to requests made by other parties to this proceeding to the extent they are not produced in response to the following requests. We will provide you with all documents that we produce in response to requests made by other parties to the proceeding, as well as documents responsive to the requests of the Music Claimants.

## Testimony of Seth Saltzman

1. Page 4, ¶¶ 9 (carryover) & 11; Page 5, ¶ 12; and Pages 6-7, ¶ 16 (written as ¶17 in the initial request) (Initial Request No. 1): This request asked that you "provide copies of the 'bulk licenses' referenced herein that 'afford users instant access to all of the compositions in each of the PROs' repertoires each year for an annual fee' 'at fair rates', that ASCAP, BMI and SESAC have with broadcast television stations, broadcast

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television networks, cable television networks, and cable television system operators for the years 1990-1992 and 1998-1999." No documents were provided in response to this request, although a reference was provided to the websites of the Music Claimants. It is apparent from the testimony and the listed objections that there are responsive underlying documents beyond the blank licenses on the web sites, and JSC renews its request for the production of these documents.

2. Page 14, ¶¶ 34 and 35 (Initial Request No. 4): This request asked that you "provide all documents underlying the statement that each of the programs on Music Claimants' Exhibit 1 (video) was 'broadcast on Local Stations retransmitted as distant signals by cable systems in 1998 or 1999' and that 'each of the examples in my testimony (as well as in the testimony of Jeffrey Lyons and the *Felicity* examples in the testimony of Snuffy Walden), have been performed on Local Stations retransmitted as distant signals by cable systems in 1998 or 1999,' including, without limitation, all copies of full-length broadcasts from which the clips are taken." The full-length broadcasts that underlie the clips were not produced. JSC renews its request for the production of these broadcasts, which, according to Mr. Saltzman's testimony, are maintained by ASCAP in the ordinary course of business. To the extent that this request might have been read as a request for the broadcasts underlying Exhibits 2 and 3, JSC clarifies that this request is limited to the full-length broadcasts that underlie the clips on Exhibit 1.

## Testimony of Frank Krupit

1. Page 1, ¶ 3 (Initial Request No. 1): This request asked that you "provide all documents underlying the 'objective music use study' discussed in this paragraph, including, without limitation, the complete database underlying the study in electronic format." Music Claimants CD #2 contains some electronic versions of documents responsive to this request. Please confirm that all electronic documents underlying the music use study have been produced, including all workpapers and computer programs and files used to generate and represent the results of the music use study. If any electronic documents that underlie the music use study have not yet been produced, please provide them. In addition, please confirm that the data from the music cue sheets used in the music use study do not exist in electronic form. If any or all of the music cue sheets or data taken from them exist in electronic form, JSC renews its request for their production.

2. Page 2, ¶ 5 (Initial Request No. 9): This request asked that you "provide, in electronic format, a complete copy of the database from TVData Technologies including, without limitation, the program listings referred to in this paragraph." The Music Use Data and Program Information on Music Claimants CD # 2 is identified as responsive to

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this request,<sup>1</sup> but the CD does not appear to contain program listings from TVData. (Music Claimants CD #1 contains a TVData list of movies from 1998-99.) JSC renews its request for the production of the TVData database containing the program listings for the sample stations used in the music use study, in electronic format if available.

3. Page 2, ¶ 5 (Initial Request No. 10): This request asked that you “provide, in electronic format, a complete copy of the database containing the music cue sheets referred to in this paragraph, including, without limitation, copies of each of the music cue sheets referred to herein.” *See also* Page 9, ¶ 20 (Initial Request No. 30) (requesting documents underlying statements about matching TVData List with BMI and ASCAP cue sheet libraries.) a) Your response that the “vast majority of music cue sheets are not available in electronic format,” indicates that some cue sheets are available in electronic format, but no cue sheets in that format were produced. JSC renews its request for the production of these cue sheets. b) In addition, JSC has been informed that 15 boxes of paper cue sheets are available at Drinker Biddle & Reath for copying at our expense. The requirement stated in your response that the cue sheets will only be available for inspection until December 31, 2002 is not a reasonable restriction, especially for such a large volume of documents. Please confirm that the cue sheets will remain available for review (upon reasonable notice) throughout the above-captioned proceeding. If reasonable access during the course of the proceeding cannot be arranged, we request that you provide us with a complete copy set at your expense. c) Finally, please confirm that all documents underlying the use of the music cue sheets in the music use study have been produced, including all workpapers and computer programs and files used to generate and represent the results of the analysis of the music cue sheets for the music use study.

4. Page 3, ¶ 7 (Initial Request No. 13): This request asked that you “provide a copy of the Statement of Account Forms that contain ‘evidence of continued retransmission of commercial radio in 1998 and 1999’ for 1998 and 1999 as referred to in this paragraph.” We understand that at least a portion of these statements of account are included in Exhibit 35 of your direct case. Please either 1) confirm that all statements of account underlying the quoted statement are included in Exhibit 35, and that the complete statements of account are provided, or 2) provide all additional underlying statements of account, and provide complete copies of the statements of account in Exhibit 35.

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<sup>1</sup> References to documents being responsive to a particular request are based on the information in the index of documents produced by Music Claimants with references to the specific document production requests of the Joint Sports Claimants that was provided to us on December 18, 2002.

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5. Page 3, ¶ 7 (Initial Request No. 14): This request asked that you "provide, in electronic format, a copy of the 'licensing logs kept by BMI in the ordinary course of its business which demonstrate the continued carriage of commercial radio stations by cable systems in 1998 and 1999' as referred to in this paragraph." We understand that at least some of the licensing logs responsive to this request are included in Exhibit 36 of your direct case. Please either 1) confirm that all licensing logs underlying the quoted statement are included in Exhibit 36, and that complete copies of the licensing logs are provided, or 2) provide all additional licensing logs referred to in the quoted statement, and provide complete copies of the licensing logs in Exhibit 36.

6. Page 6, ¶ 16 (Initial Request No. 25): This request asked that you "provide, in electronic format, the complete database of TVData information supplied to BMI." The information on Music Claimants CD # 2 is identified as responsive to this request, but with the possible exception of a list of movies from 1998-99 on CD # 1, the CDs produced by the Music Claimants do not appear to contain the TVData information supplied to BMI. JSC renews its request for the database of TVData information and requests that it be provided in as usable an electronic format as possible.

7. Page 7, ¶ 16 (Initial Request No. 26): This request asked that you "provide all documents underlying the statement that 'BMI processed the TVData listings for each sample station on each day of the sample week for each year in the study and subtracted all network programs.'" Music Claimants CD # 2 is identified as responsive to this request. As noted above, it does not appear to contain the TVData information that underlies this statement and that was used in the process described here. JSC renews its request for production of all documents underlying this statement, including the TVData listings in electronic format and all workpapers used in processing the listings.

8. Page 7, note 6 (Initial Request No. 27): This request asked that you "provide all documents underlying the statement that 'For one station, WBAL, TVData provided incomplete program listings in 1998 and 1999. Accordingly, for that station, BMI supplemented the TVData information with data from newspaper television listings,' including, without limitation, the program listings for WBAL supplied by TVData and the newspaper television listings referred to in this note." Music Claimants CDs # 2 is identified as responsive to this request, but it appears to contain neither the program listings for WBAL supplied by TVData, nor the newspaper listings referred to in the note. JSC renews its request for these documents that underlie the quoted statement.

9. Page 7, ¶ 16 (Initial Request No. 28): This request asked that you "provide all documents underlying the 'TVData Lists' of 'non-network programs that were carried during the sample week on the stations surveyed during the sample years,' as referred to in this paragraph and contained in Music Claimants' Exhibits 30 and 31." Once again, Music Claimants CD # 2 is identified as responsive to this request. With the possible



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exception of one TVData list of movies from 1998-99, the CDs do not appear to contain responsive documents, including, but not limited to, the underlying electronic data received from TVData. JSC renews its request for these underlying documents.

10. Page 8, note 8 (Initial Request No. 29): This request asked that you "provide all documents underlying the statement that 'In limited cases, an average cue sheet had to be manually created specifically for use in the study. We accomplished this by randomly selecting the cue sheets for 13 episodes of the program from the file for that program,' including, without limitation, documents sufficient to show the number of cases and the programs for which 'random cue sheets' were generated." The samples of music cue sheets at MC 05878-MC 06073 are identified as responsive to this request. We are unable to identify the responsive documents within this range. Please provide us with the specific Bates range of the average cue sheets and underlying documents within this sample. If the underlying documents are not included within this range, JSC renews its request for the documents underlying the statement quoted above. Given the limited number of these average or random cue sheets that were created, the entire set should be produced.

## Testimony of Dr. Peter M. Boyle

1. Pages 7 – 16 (Initial Request No. 4): This request asked that you "provide all documents underlying the 'Music Use Study and Analysis' described in this section of Dr. Boyle's testimony, including, without limitation, the complete database underlying the study in electronic format." The Larson data on Music Claimants CD #1 is identified as responsive to this request. Please confirm that all responsive documents have been produced, including all workpapers and computer programs and files used to generate and represent the results of the "music use study and analysis." If any documents that underlie the music use study have not yet been produced, please provide them.

2. (Initial Request No. 7): This request asked that you "[i]n accordance with 37 C.F.R. § 251.48(f)(4)(iii), provide all statistics concerning the music use study and analysis performed, all descriptions of how the tests were conducted, all related calculations, all computer programs used in conducting the music use study and analysis performed, and all final results." The Larson data on Music Claimants CD # 1 is identified as responsive to this request. Please confirm that all documents responsive to this request have been provided, or provide the additional responsive documents.

3. (Initial Request No. 8): This request asked that you "[i]n accordance with 37 C.F.R. § 251.48(f)(4)(iv), provide all summarized descriptions of input data and all input data, in electronic format." The Larson data on Music Claimants CD # 1 is identified as responsive to this request. Please confirm that all documents responsive to this request have been provided, or provide the additional responsive documents.

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December 19, 2002

Page 7

4. Page 11, Figures 1 and 2 (Initial Request No. 10): This request asked that you "provide all documents underlying Figures 1 and 2, and the percentage of U.S. Fees Generated figures contained therein." Part of the response to this request includes an objection based on the fact that the request seeks privileged information, but fails to identify the documents with sufficient particularity to allow an assessment of the privilege claim. In addition, the response fails to set forth the facts supporting the privilege claim as requested in our initial letter stating our document requests. Please provide sufficient information to allow JSC to assess the claim of privilege.

5. Page 12, ¶¶ 32 and 33 (Initial Request No. 12): This request asked that you "provide, in electronic format, the data presented by BMI that 'included for both the 1991-1992 and 1998-1999 periods, a calculation of music duration on non-network programs performed on the sample Stations over the sample week for each year in each period,' referred to as the 'Duration Data,' including, but not limited to 'the non-network programs that aired on each sample Station on each day in each sample week,' the 'Total Program Hours,' the 'Matched Program Hours,' and the 'Music Minutes.'" See also Page 12, ¶¶ 32 and 33 (Initial Request No. 13) ("Please provide all documents underlying the Duration Data described in these paragraphs.") Music Claimants CD #1 (Larson Data) is identified as responsive to these requests. JSC is unable to identify the Duration Data and documents underlying them on Music Claimants CD #1. (It is possible that some responsive information is included on Music Claimants CD #2.) Please provide sufficient description of the data and underlying documents to permit such identification or, if you have not produced the data and underlying documents, including all workpapers and computer programs and files used to generate and represent the results of the duration data calculations, provide them.

6. Pages 13-15 (Initial Request Nos. 14-25): All of these requests involve calculations that Dr. Boyle performed for the Music Use Study and Analysis described in his testimony. Music Claimants CD #1 is identified as responsive to each of these requests. Please confirm that all underlying documents responsive to Initial Requests 14-25 have been produced, including all workpapers and computer programs and files used to generate and represent the results of Dr. Boyle's music use study and analysis, and produce any underlying documents that have not yet been produced. In addition, please identify with specificity which documents on Music Claimants CD # 1 are responsive to each of these requests.

7. Pages i-v, Appendix A (Initial Request No. 27): This request asked that you "provide all documents underlying Appendix A: Selecting the Comparison Period Station Samples, including, but not limited to, the Larson Data described therein." Part of the response to this request suggests that it seeks privileged information, but fails to identify the potentially responsive documents with sufficient particularity to allow an assessment of the privilege claim. In addition, the response fails to set forth the facts supporting the

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# ARNOLD & PORTER

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Joan M. McGivern, et al.

December 19, 2002

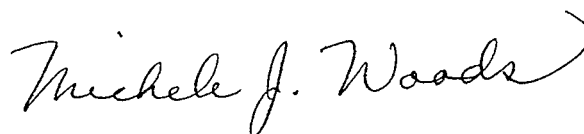
Page 8

privilege claim as requested in our initial letter stating our document requests. Please provide sufficient information to allow JSC to assess the claim of privilege.

8. Page i, Appendix B (Initial Request No. 29): This request asked that you "provide all documents underlying Appendix B: Linear Regression Study, including, but not limited to, the calculations and equations contained therein." An electronic file is provided on Music Claimants CD # 1. Appendix B indicates that STATA software was used to "estimate the regression model" and it appears that this underlying software has not been provided to us. Please identify where the software has been provided or provide it to us.

9. Exhibits 39 and 41 (Initial Request Nos. 30 and 31): These requests asked for the documents underlying both of these exhibits. Larson data from Music Claimants CD #1 is identified as responsive to both requests, but that response appears to be incomplete because the exhibits both involve average minutes of music per program hour, which does not appear to be a component of the Larson data. Please provide all underlying documents responsive to these requests.

Sincerely,

A handwritten signature in cursive script that reads "Michele J. Woods". The signature is written in dark ink and is positioned below the word "Sincerely,".

Michele J. Woods



Before the  
COPYRIGHT ARBITRATION ROYALTY PANEL  
COPYRIGHT OFFICE  
LIBRARY OF CONGRESS  
Washington, D.C.

-----	X	
	:	
In the Matter of	:	
	:	Docket No. 2001-8 CARP CD 98-99
DISTRIBUTION OF 1998 AND 1999	:	
CABLE ROYALTY FUNDS	:	
	:	
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**MUSIC CLAIMANTS' RESPONSE TO  
JOINT SPORTS CLAIMANTS' FOLLOW-UP DISCOVERY REQUESTS**

Pursuant to 37 C.F.R. § 251.45(c) and the Order of the Copyright Office dated October 28, 2002, Broadcast Music, Inc. ("BMI"), the American Society of Composers Authors and Publishers ("ASCAP"), and SESAC, Inc. ("SESAC") (collectively, the "Music Claimants") hereby reply to the follow-up discovery requests dated December 19, 2002 (the "Requests") made by Joint Sports Claimants in the above-referenced proceeding.

To the extent any request seeks the production of materials subject to legal privilege, the Music Claimants object and decline to produce such material. To the extent that any request seeks the production of materials to a degree, in a manner, or under circumstances not required by the applicable procedural rules, the Music Claimants object and decline to provide such production. To the extent that any request seeks documents readily available in the public record or in publicly available sources, Music Claimants object and decline to provide such production. These responses incorporate by reference the sections "Production"

and "Objections Referred to Below" in the Music Claimants' responses to initial document requests dated December 10, 2002.

## RESPONSES OF THE MUSIC CLAIMANTS

### Testimony of Seth Saltzman

**Follow-Up No. 1** Page 4, ¶¶ 9 (carryover) & 11; Page 5, ¶ 12; and Pages 6-7, ¶ 16 (written as ¶17 in the initial request) (Initial Request No. 1): This request asked that you "provide copies of the 'bulk licenses' referenced herein that 'afford users instant access to all of the compositions in each of the PROs' repertories each year for an annual fee' 'at fair rates', that ASCAP, BMI and SESAC have with broadcast television stations, broadcast television networks, cable television networks, and cable television system operators for the years 1990-1992 and 1998-1999." No documents were provided in response to this request, although a reference was provided to the websites of the Music Claimants. It is apparent from the testimony and the listed objections that there are responsive underlying documents beyond the blank licenses on the web sites, and JSC renews its request for the production of these documents.

**Response to Follow-Up No. 1** Music Claimants repeat that the Request is improper for the reasons stated in Objections A, E, F, and G. Without prejudice to or waiving the foregoing objections, example forms of agreement may be found on the Music Claimants' websites at <ascap.com>, <bmi.com> and <sesac.com>. In addition, the statement is based on Mr. Saltzman's general knowledge and experience.

**Follow-Up No. 2** Page 14, ¶¶ 34 and 35 (Initial Request No. 4): This request asked that you "provide all documents underlying the statement that each of the programs on Music Claimants' Exhibit 1 (video) was 'broadcast on Local Stations retransmitted as distant signals by cable systems in 1998 or 1999' and that 'each of the examples in my testimony (as well as in the testimony of Jeffrey Lyons and the *Felicity* examples in the testimony of Snuffy Walden), have been performed on Local Stations retransmitted as distant signals by cable systems in 1998 or 1999,' including, without limitation, all copies of full-length broadcasts from which the clips are taken." The full-length broadcasts that underlie the clips were not produced. JSC renews its request for the production of these broadcasts, which, according to Mr. Saltzman's testimony, are maintained by ASCAP in the ordinary course of business. To the extent that this request might have been read as a request for the broadcasts underlying Exhibits 2 and 3, JSC clarifies that this request is limited to the full-length broadcasts that underlie the clips on Exhibit 1.

**Response to Follow-Up No. 2** Music Claimants repeat that the Request is improper for the reasons stated in Objections A and G, and state that the request for "all copies of full-length broadcasts from which the clips were taken" is improper for the reasons stated in Objection F. Without prejudice to or waiving the foregoing objections, Music Claimants produced all available documents underlying Mr.

Saltzman's testimony. Videotapes of the broadcasts underlying Music Claimants' Exhibit 1 will be made available, on three business days' notice, for inspection in the offices of ASCAP and copying at the expense of Joint Sports Claimants.

### Testimony of Frank Krupit

**Follow-Up No. 1** Page 1, ¶ 3 (Initial Request No. 1): This request asked that you "provide all documents underlying the 'objective music use study' discussed in this paragraph, including, without limitation, the complete database underlying the study in electronic format." Music Claimants CD #2 contains some electronic versions of documents responsive to this request. Please confirm that all electronic documents underlying the music use study have been produced, including all workpapers and computer programs and files used to generate and represent the results of the music use study. If any electronic documents that underlie the music use study have not yet been produced, please provide them. In addition, please confirm that the data from the music cue sheets used in the music use study do not exist in electronic form. If any or all of the music cue sheets or data taken from them exist in electronic form, JSC renews its request for their production.

**Response to Follow-Up No. 1** Music Claimants reassert their response to Initial Request No. 1 and Objection A. By way of further response, Music Claimants state that all data underlying the music use study has been produced. The electronic files containing program and music use duration has been produced in text files that may be imported into any spreadsheet program. Music Claimants further state that there are no "electronic cue sheets," although a relatively small portion of the music use information is derived by calculating "system averages" of cue sheets, as explained in Mr. Krupit's testimony. The calculation for these averages is performed by BMI's computer system, but the underlying cue sheets are not available in electronic form.

**Follow-Up No. 2** Page 2, ¶ 5 (Initial Request No. 9): This request asked that you "provide, in electronic format, a complete copy of the database from TVData Technologies including, without limitation, the program listings referred to in this paragraph." The Music Use Data and Program Information on Music Claimants CD # 2 is identified as responsive to this request, but the CD does not appear to contain program listings from TVData. (Music Claimants CD #1 contains a TVData list of movies from 1998-99.) JSC renews its request for the production of the TVData database containing the program listings for the sample stations used in the music use study, in electronic format if available.

**Response to Follow-Up No. 2** Music Claimants reassert their response to Initial Request No. 9 and Objections G and I. By way of further response, Music Claimants state that they do not have a TV Data database. Rather, Music Claimants have program information from TV Data which has been provided on CD#2, Also included on CD#2 is additional program information for station WBAL as described in Mr. Krupit's testimony. The List of movies on CD #1 is not responsive to the request.

**Follow-Up No. 3** Page 2, ¶ 5 (Initial Request No. 10): This request asked that you "provide, in electronic format, a complete copy of the database containing the music cue sheets referred to in this paragraph, including, without limitation, copies of each of the music cue sheets referred to herein." *See also* Page 9, ¶ 20 (Initial Request No. 30) (requesting documents underlying statements about matching TVData List with BMI and ASCAP cue sheet libraries.) a) Your response that the "vast majority of music cue sheets are not available in electronic format," indicates that some cue sheets are available in electronic format, but no cue sheets in that format were produced. JSC renews its request for the production of these cue sheets. b) In addition, JSC has been informed that 15 boxes of paper cue sheets are available at Drinker Biddle & Reath for copying at our expense. The requirement stated in your response that the cue sheets will only be available for inspection until December 31, 2002 is not a reasonable restriction, especially for such a large volume of documents. Please confirm that the cue sheets will remain available for review (upon reasonable notice) throughout the above-captioned proceeding. If reasonable access during the course of the proceeding cannot be arranged, we request that you provide us with a complete copy set at your expense. c) Finally, please confirm that all documents underlying the use of the music cue sheets in the music use study have been produced, including all workpapers and computer programs and files used to generate and represent the results of the analysis of the music cue sheets for the music use study.

**Response to Follow-Up No. 3** Music Claimants reassert their response to Initial Request No. 10 and Objections G and I. By way of further response, Music Claimants state that all data underlying the music use study has been produced. The electronic files containing program and music use duration have been produced in text files that may be imported into any spreadsheet program. Music Claimants further state that there are no "electronic cue sheets," although a relatively small portion of the music use information is derived by calculating "system averages" of cue sheets, as explained in Mr. Krupit's testimony. The calculation for these averages is performed by BMI's computer system, but the underlying cue sheets are not available in electronic form. Our statement regarding the "vast majority of cue sheets" related to those identified program for which we had a specific underlying cue sheet. In addition, Music Claimants agree to make the cue sheets available for inspection upon reasonable notice at the offices of Drinker Biddle & Reath throughout the proceeding.

**Follow-Up No. 4** Page 3, ¶ 7 (Initial Request No. 13): This request asked that you "provide a copy of the Statement of Account Forms that contain 'evidence of continued retransmission of commercial radio in 1998 and 1999' for 1998 and 1999 as referred to in this paragraph." We understand that at least a portion of these statements of account are included in Exhibit 35 of your direct case. Please either 1) confirm that all statements of account underlying the quoted statement are included in Exhibit 35, and that the complete statements of account are provided, or 2) provide all additional underlying statements of account, and provide complete copies of the statements of account in Exhibit 35.

**Response to Follow-Up No. 4** Music Claimants reassert their response to Initial Request No. 13 and Objection G. By way of further response, Music



Claimants state that all documents underlying Mr. Krupit's testimony relating to the Statements of Account have been produced. Music Claimants will confirm that complete copies of the Statements of Account have been produced.

**Follow-Up No. 5** Page 3, ¶ 7 (Initial Request No. 14): This request asked that you "provide, in electronic format, a copy of the 'licensing logs kept by BMI in the ordinary course of its business which demonstrate the continued carriage of commercial radio stations by cable systems in 1998 and 1999' as referred to in this paragraph." We understand that at least some of the licensing logs responsive to this request are included in Exhibit 36 of your direct case. Please either 1) confirm that all licensing logs underlying the quoted statement are included in Exhibit 36, and that complete copies of the licensing logs are provided, or 2) provide all additional licensing logs referred to in the quoted statement, and provide complete copies of the licensing logs in Exhibit 36.

**Response to Follow-Up No. 5** Music Claimants reassert their response to Initial Request No. 14 and Objection G. By way of further response, Music Claimants state that all documents underlying Mr. Krupit's testimony as to the licensing logs have been produced.

**Follow-Up No. 6** Page 6, ¶ 16 (Initial Request No. 25): This request asked that you "provide, in electronic format, the complete database of TVData information supplied to BMI." The information on Music Claimants CD # 2 is identified as responsive to this request, but with the possible exception of a list of movies from 1998-99 on CD # 1, the CDs produced by the Music Claimants do not appear to contain the TVData information supplied to BMI. JSC renews its request for the database of TVData information and requests that it be provided in as usable an electronic format as possible.

**Response to Follow-Up No. 6** Music Claimants reassert their response to Initial Request No. 25 and Objections G and I. By way of further response, Music Claimants state that they do not have a TV Data database. Rather, Music Claimants have program information from TV Data which has been provided on CD#2, Also included on CD#2 is additional program information for station WBAL as described in Mr. Krupit's testimony. The List of movies on CD #1 is not responsive to the request.

**Follow-Up No. 7** Page 7, ¶ 16 (Initial Request No. 26): This request asked that you "provide all documents underlying the statement that 'BMI processed the TVData listings for each sample station on each day of the sample week for each year in the study and subtracted all network programs.'" Music Claimants CD # 2 is identified as responsive to this request. As noted above, it does not appear to contain the TVData information that underlies this statement and that was used in the process described here. JSC renews its request for production of all documents underlying this statement, including the TVData listings in electronic format and all workpapers used in processing the listings.

**Response to Follow-Up No. 7** Music Claimants reassert their response to Initial Request No. 26 and Objection G. By way of further response, Music

Claimants state that they do not have a TV Data database. Rather, Music Claimants have program information from TV Data which has been provided on CD#2. Also included on CD#2 is additional program information for station WBAL as described in Mr. Krupit's testimony.

**Follow-Up No. 8** Page 7, note 6 (Initial Request No. 27): This request asked that you "provide all documents underlying the statement that 'For one station, WBAL, TVData provided incomplete program listings in 1998 and 1999. Accordingly, for that station, BMI supplemented the TVData information with data from newspaper television listings,' including, without limitation, the program listings for WBAL supplied by TVData and the newspaper television listings referred to in this note." Music Claimants CDs # 2 is identified as responsive to this request, but it appears to contain neither the program listings for WBAL supplied by TVData, nor the newspaper listings referred to in the note. JSC renews its request for these documents that underlie the quoted statement.

**Response to Follow-Up No. 8** Music Claimants state that the additional program information for station WBAL appears on CD#2. In addition, the worksheets that identify the WBAL program that were added have been produced as part of Mr. Krupit's files Bates Nos. MC 06074 – MC 06120. Music Claimants do not believe that any copy of the television listings (as opposed to the worksheets) was retained.

**Follow-Up No. 9** Page 7, ¶ 16 (Initial Request No. 28): This request asked that you "provide all documents underlying the 'TVData Lists' of 'non-network programs that were carried during the sample week on the stations surveyed during the sample years,' as referred to in this paragraph and contained in Music Claimants' Exhibits 30 and 31." Once again, Music Claimants CD # 2 is identified as responsive to this request. With the possible exception of one TVData list of movies from 1998-99, the CDs do not appear to contain responsive documents, including, but not limited to, the underlying electronic data received from TVData. JSC renews its request for these underlying documents.

**Response to Follow-Up No. 9** Music Claimants reassert their response to Initial Request No. 28 and Objection G. By way of further response, Music Claimants state that they all program information from TV Data underlying the "TV Data Lists" has been provided on CD#2.

**Follow-Up No. 10** Page 8, note 8 (Initial Request No. 29): This request asked that you "provide all documents underlying the statement that 'In limited cases, an average cue sheet had to be manually created specifically for use in the study. We accomplished this by randomly selecting the cue sheets for 13 episodes of the program from the file for that program,' including, without limitation, documents sufficient to show the number of cases and the programs for which 'random cue sheets' were generated." The samples of music cue sheets at MC 05878-MC 06073 are identified as responsive to this request. We are unable to identify the responsive documents within this range. Please provide us with the specific Bates range of the average cue sheets and underlying documents within this sample. If the underlying documents are not included within this range, JSC renews its request for the

documents underlying the statement quoted above. Given the limited number of these average or random cue sheets that were created, the entire set should be produced.

**Response to Follow-Up No. 10** Music Claimants reassert their response to Initial Request No. 29 and Objections F and G. By way of further response, Music Claimants state that they have produced electronic files that identify each of the programs and whether the music information for each program was derived from an average cue sheet, all of which have been made available for inspection. Per agreement with counsel for Joint Sports Claimants, Music Claimants copied and provided a sample of cue sheets. If JSC wishes to identify a small portion of the manually created average of cue sheets, Music Claimants will provide copies thereof. Otherwise, all of those cue sheets have been produced and remain available for inspection.

#### **Testimony of Dr. Peter M. Boyle**

**Follow-Up No. 1** Pages 7 – 16 (Initial Request No. 4): This request asked that you “provide all documents underlying the ‘Music Use Study and Analysis’ described in this section of Dr. Boyle’s testimony, including, without limitation, the complete database underlying the study in electronic format.” The Larson data on Music Claimants CD #1 is identified as responsive to this request. Please confirm that all responsive documents have been produced, including all workpapers and computer programs and files used to generate and represent the results of the “music use study and analysis.” If any documents that underlie the music use study have not yet been produced, please provide them.

**Response to Follow-Up No. 1** Music Claimants repeat that the Request is improper for the reasons stated in Objection A, E, F, and G. Without prejudice to or waiving the foregoing objections, all non-privileged documents underlying the music use study were produced and made available.

**Follow-Up No. 2** (Initial Request No. 7): This request asked that you “[i]n accordance with 37 C.F.R. § 251.48(f)(4)(iii), provide all statistics concerning the music use study and analysis performed, all descriptions of how the tests were conducted, all related calculations, all computer programs used in conducting the music use study and analysis performed, and all final results.” The Larson data on Music Claimants CD # 1 is identified as responsive to this request. Please confirm that all documents responsive to this request have been provided, or provide the additional responsive documents.

**Response to Follow-Up No. 2** Music Claimants repeat that the Request is improper for the reasons stated in Objection A, D, E, F, and G. Without prejudice to or waiving the foregoing objections, all non-privileged documents underlying the music use study were produced and made available.

**Follow-Up No. 3** (Initial Request No. 8): This request asked that you “[i]n accordance with 37 C.F.R. § 251.48(f)(4)(iv), provide all summarized descriptions of input data and all input data, in electronic format.” The Larson data on Music Claimants CD # 1 is identified

as responsive to this request. Please confirm that all documents responsive to this request have been provided, or provide the additional responsive documents.

**Response to Follow-Up No. 3** Music Claimants repeat that the Request is improper for the reasons stated in Objection A, E, and F. Without prejudice to or waiving the foregoing objections, all non-privileged documents underlying the music use study were produced and made available.

**Follow-Up No. 4** Page 11, Figures 1 and 2 (Initial Request No. 10): This request asked that you "provide all documents underlying Figures 1 and 2, and the percentage of U.S. Fees Generated figures contained therein." Part of the response to this request includes an objection based on the fact that the request seeks privileged information, but fails to identify the documents with sufficient particularity to allow an assessment of the privilege claim. In addition, the response fails to set forth the facts supporting the privilege claim as requested in our initial letter stating our document requests. Please provide sufficient information to allow JSC to assess the claim of privilege.

**Response to Follow-Up No. 4** Music Claimants repeat that the Request is improper for the reasons stated in Objections D and F. Without prejudice to or waiving the foregoing objections, all non-privileged documents underlying the music use study were produced and made available, but privileged communications between Dr. Boyle and counsel regarding Figures 1 and 2 have not been produced.

**Follow-Up No. 5** Page 12, ¶¶ 32 and 33 (Initial Request No. 12): This request asked that you "provide, in electronic format, the data presented by BMI that 'included for both the 1991-1992 and 1998-1999 periods, a calculation of music duration on non-network programs performed on the sample Stations over the sample week for each year in each period,' referred to as the 'Duration Data,' including, but not limited to 'the non-network programs that aired on each sample Station on each day in each sample week,' the 'Total Program Hours,' the 'Matched Program Hours,' and the 'Music Minutes.'" See also Page 12, ¶¶ 32 and 33 (Initial Request No. 13) ("Please provide all documents underlying the Duration Data described in these paragraphs.") Music Claimants CD #1 (Larson Data) is identified as responsive to these requests. JSC is unable to identify the Duration Data and documents underlying them on Music Claimants CD #1. (It is possible that some responsive information is included on Music Claimants CD #2.) Please provide sufficient description of the data and underlying documents to permit such identification or, if you have not produced the data and underlying documents, including all workpapers and computer programs and files used to generate and represent the results of the duration data calculations, provide them.

**Response to Follow-Up No. 5** Music Claimants repeat that the Request is improper for the reasons stated in Objections A and F. Without prejudice to or waiving the foregoing objections, all non-privileged documents underlying the music use study were produced and made available, and explained in the Direct Case of the Music Claimants.

**Follow-Up No. 6** Pages 13-15 (Initial Request Nos. 14-25): All of these requests involve calculations that Dr. Boyle performed for the Music Use Study and Analysis described in his testimony. Music Claimants CD #1 is identified as responsive to each of these requests. Please confirm that all underlying documents responsive to Initial Requests 14-25 have been produced, including all workpapers and computer programs and files used to generate and represent the results of Dr. Boyle's music use study and analysis, and produce any underlying documents that have not yet been produced. In addition, please identify with specificity which documents on Music Claimants CD # 1 are responsive to each of these requests.

**Response to Follow-Up No. 6** Music Claimants repeat that the Requests are improper for the reasons stated in Responses to initial requests Nos. 14-25. Without prejudice to or waiving the foregoing objections, all non-privileged documents underlying the music use study were produced and made available.

**Follow-Up No. 7** Pages i-v, Appendix A (Initial Request No. 27): This request asked that you "provide all documents underlying Appendix A: Selecting the Comparison Period Station Samples, including, but not limited to, the Larson Data described therein." Part of the response to this request suggests that it seeks privileged information, but fails to identify the potentially responsive documents with sufficient particularity to allow an assessment of the privilege claim. In addition, the response fails to set forth the facts supporting the privilege claim as requested in our initial letter stating our document requests. Please provide sufficient information to allow JSC to assess the claim of privilege.

**Response to Follow-Up No. 7** Music Claimants repeat that the Request is improper for the reasons stated in Objections A, D, and F. Without prejudice to or waiving the foregoing objections, all non-privileged documents underlying the music use study were produced and made available.

**Follow-Up No. 8** Page i, Appendix B (Initial Request No. 29): This request asked that you "provide all documents underlying Appendix B: Linear Regression Study, including, but not limited to, the calculations and equations contained therein." An electronic file is provided on Music Claimants CD # 1. Appendix B indicates that STATA software was used to "estimate the regression model" and it appears that this underlying software has not been provided to us. Please identify where the software has been provided or provide it to us.

**Response to Follow-Up No. 8** Music Claimants repeat that the Request is improper for the reasons stated in Objection A and F. Without prejudice to or waiving the foregoing objections, all non-privileged documents underlying the music use study were produced and made available, and in any event Music Claimants are under no obligation to provide claimants with copies of software, which may be copy-protected or proprietary under license agreements with software licensors.

**Follow-Up No. 9** Exhibits 39 and 41 (Initial Request Nos. 30 and 31): These requests asked for the documents underlying both of these exhibits. Larson data from Music Claimants CD #1 is identified as responsive to both requests, but that response appears to be

incomplete because the exhibits both involve average minutes of music per program hour, which does not appear to be a component of the Larson data. Please provide all underlying documents responsive to these requests.

**Response to Follow-Up No. 9**      Music Claimants repeat that the Requests are improper for the reasons stated in Responses to initial requests Nos. 30 and 31. Without prejudice to or waiving the foregoing objections, all non-privileged documents underlying the music use study were produced and made available. In particular, Music Claimants have provided electronic files in CD #2 that identify the programs, episodes, show length, channel, date of carriage, and music use duration, including identifying the programs for which no music use information was available.

Dated: December 23, 2002

Respectfully submitted,

**MUSIC CLAIMANTS**

**AMERICAN SOCIETY OF  
COMPOSERS, AUTHORS AND  
PUBLISHERS**

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## CERTIFICATE OF SERVICE

I, Jeffrey J. Lopez, hereby certify that on this 23rd day of December 2002, a copy of the foregoing "MUSIC CLAIMANTS' RESPONSE TO JOINT SPORTS CLAIMANTS' FOLLOW-UP DISCOVERY REQUESTS" was served by U.S. First Class Mail on the following:

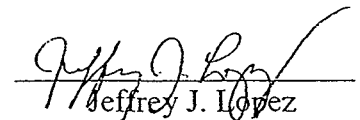
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Dated: December 23, 2002

  
Jeffrey J. Lopez



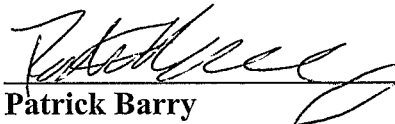
**CERTIFICATE OF SERVICE**  
**Docket No. 2001-8 CARP CD 98-99**

I hereby certify that a copy of the foregoing Joint Sports Claimants' Motion to Compel Production of Documents Underlying the Direct Case of Music Claimants was sent on January 10, 2003, by hand delivery and overnight mail, to the following parties:

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